

between Genentech, Inc. and ATCC, which assures permanent and unrestricted availability of the progeny of the culture of the deposit to the public upon issuance of the pertinent U.S. patent or upon laying open to the public of any U.S. or foreign patent application, whichever comes first, and assures availability of the progeny to one determined by the U.S. Commissioner of Patents and Trademarks to be entitled thereto according to 35 USC §122 and the Commissioner's rules pursuant thereto (including 37 CFR §1.14 with particular reference to 886 OG 638).--

## **REMARKS**

Claims 46-57 are before the Examiner for consideration.

### **Examiner Interview**

Applicants wish to thank the Examiner for the helpful and courteous interview conducted on January 24, 2002. The Interview Summaries memorialized the general discussion.

### **Species Election Requirement**

Applicants respectfully request that the Examiner reconsider the finality of the species election. In the previous Office Action, the Examiner required an election of species of the independent claims. In response, Applicants elected species 12D5 with traverse. Examination of species 12D5 was conducted, and the species was found to be patentable over the prior art. Thus, the Examiner is compelled to continue the prior art search for each of the non-elected species in turn. However, the Examiner is erroneously treating the election of species as if it were a restriction requirement by refusing to consider further non-elected species. Applicants appreciate the Examiner's time constraints and the ever-expanding nucleic acid databases, but emphasize